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January 14, 2010

EX PARTE PRESENTATION

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: *Ex Parte Presentation* in Docket Nos. 07-29 & 07-198

Pursuant to Section 1.1206 of the Commission's rules, 47 C.F.R. § 1.1206, DISH Network ("DISH") submits this letter summarizing three meetings it held on January 13, 2010: The first meeting included Bill Lake (MB), Austin Schlick (OGC), Nancy Murphy (MB), Diana Sokolow (MB), David Konczal (MB), Mary Beth Murphy (MB), Marilyn Sonn (OGC), Susan Aaron (OGC), and Stuart Benjamin (OSP). The second and third meetings took place later in the day with Rick Kaplan in Commissioner Clyburn's office and then with Millie Kerr in Commissioner Baker's office.

During these meetings, DISH urged the Commission to conclude, under section 628(b), that it is unlawful for a cable operator or its affiliated video programmer to deny access to "must have" content that can't be replicated, such as a regional sports network ("RSN"), because withholding such programming constitutes an unfair practice that hinders significantly the ability of other MVPDs to compete. In particular, where an RSN chooses to enter into an exclusive distribution arrangement with its affiliated cable operator – an arrangement that would make little sense to the RSN but for the interests of the affiliated cable operator – that constitutes a presumptively unfair practice. In light of the voluminous record in this proceeding and numerous prior findings regarding the economic importance of RSNs to MVPD competition, the Commission should require cable operators and their affiliated programmers to grant competitors immediate access to RSNs without further delay. Cable operators have had ample opportunity – including in the context of this rulemaking proceeding – to rebut the Commission's multiple findings that RSN programming is "must have" programming that cannot be duplicated, and that withholding such programming harms competition. They have not done so. Thus, the Commission should not permit them to continue to hamper competition.



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In addition, DISH discussed its recent penetration rates in both Philadelphia and San Diego and circulated the attached chart. The chart shows that, where DISH has been denied access to an RSN in these particular markets, its penetration rate remains well below both the rate achieved in comparable cities and its average national penetration rate. Thus, the lack of access to critical programming continues to hinder significantly our ability to compete in those markets. If the Commission were to grant immediate relief in those two specific markets – to find that exclusive distribution arrangements between the RSNs and their affiliated cable operators in Philadelphia and San Diego violate section 628(b) – and then provide a mechanism for making similar showings in other markets, that would constitute a narrow holding that would offer immediate and concrete consumer benefits.

Respectfully submitted,

/s/ Linda Kinney

Linda Kinney

Attachment

cc: Rick Kaplan
Millie Kerr
Bill Lake
Austin Schlick
Nancy Murphy
Diana Sokolow
David Konczal
Mary Beth Murphy
Marilyn Sonn
Susan Aaron
Stuart Benjamin